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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,831	06/21/2001	John Joseph Curro	8592	8078

27752 7590 02/03/2004

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EXAMINER

PIERCE, JEREMY R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/886,831

Applicant(s)

CURRO ET AL.

eb

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-7,10-13 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,10-13 and 21-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 24, 2003 has been entered.

### ***Response to Amendment***

2. In Applicant's amendment, claims 1, 3-7, 10-13, 28, and 29 have been amended. Claims 1, 3-7, 10-13, and 21-29 are currently pending. Applicant's amendment is sufficient to withdraw the rejections set forth in the last Office Action.

### ***Terminal Disclaimer***

3. The terminal disclaimer filed on September 24, 2003 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of U.S. Patent Application Nos. 09/584,676; 09/886,830; 09/886,740; 09/886,828; 09/886,893; 09/886,730; and 09/886,829 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "104" has been used to designate both supply roll for the first web and the supply roll for the second web. It is noted that according to the specification, the supply roll for the second should be number 105. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "130" has been used to designate both the central layer before it is bonded to the two outer layers and the nip formed between rollers 134 and 136. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign not mentioned in the description: 102 in Figure 10. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
7. The drawings are objected to because the copy of the photographs in Figure 8 is mostly black and it is impossible to tell what the picture is depicting. A proposed drawing

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correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1, 3-7, 10-13, and 21-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 and 19-31 of copending Application No. 09/467,938. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to two outer web layers sandwiching a third material, wherein the two outer web layers are joined by a plurality of discrete bond sites.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 3-7, 10-13, and 21-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson et al. (U.S. Patent No. 5,628,097) in view of Shimalla (U.S. Patent No. 4,588,630).

Benson et al. disclose an apertured nonwoven web for a topsheet in a diaper (column 7, lines 1-2). The web may be formed of multiple layers, including embodiments of three layers (column 7, lines 26-42). The two outer layers of such a multi-layer fabric would comprise Applicant's first and second prebonded webs because Benson et al. teach that the nonwoven web of fibers should be formed into a coherent web structure by bonding (column 7, lines 61-65). The middle layer of Benson et al. would comprise the substance layer disposed because it may comprise particles in addition to fibers (column 7, line 55); therefore, particles would be disposed between the first and second webs. Benson et al. disclose the nonwoven web has bond sites at a plurality of weakened, melt-stabilized regions (column 2, lines 45-59), but do not disclose the aspect ratio of the bond sites. Still, Benson et al. do teach that any suitable shapes may be used, including rectangular (column 8, lines 31-33). Shimalla discloses apertures formed in fused areas of nonwoven webs used for absorbent products

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(Abstract). Shimalla teaches the aspect ratio of the fused areas is a result effective variable that alters the characteristics of the resulting apertures (column 6, lines 13-21). It would have been obvious to a person having ordinary skill in the art at the time of the invention to form bond areas with an aspect ratio greater than 3 in the composite material of Benson et al. in order to optimize the size of the resulting apertures for the intended use, as taught by Shimalla, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With regard to the bond site fracturing, there is no quantification for the degree of force required to fracture the bond sites, and there would exist some degree of force that would fracture the bond site to expose the middle layer. With regard to claim 3, Benson et al. teach using a roller that will form a repeating pattern of protuberances (column 8, line 23). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have all the rectangular bond sites aligned in the same direction in order to form uniform apertures in the topsheet of Benson et al. With regard to claims 5 and 11, Benson et al. disclose the nonwoven web may be formed into a laminate with various film layers (column 10, lines 13-23). With regard to claim 13, Benson et al. disclose chemical bonding as an option (column 7, line 63), but offer other alternatives and do not require it. With regard to claims 21-23, 25-27, and 29, neither Benson et al. nor Shimalla disclose the length and width dimensions of the bond sites. However, Benson et al. disclose that various shapes can be used, and Shimalla teaches that dimensions of bond sites are result effective variables that affect the resulting apertures. It would have

been obvious to a person having ordinary skill in the art at the time of the invention to make the bond sites with a length of less than 0.2 or 0.1 inches and a width of less than 0.02 inches in order to optimize the aperture size for use as a topsheet in a diaper, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. With regard to claims 24, 28, and 29, the particle material would be continuously dispersed in the central layer because Benson et al. disclose the mixtures are formed under a gas stream (column 7, line 56), which would thoroughly mix the particles with the fibers.

### ***Response to Arguments***

12. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

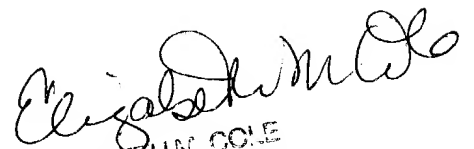
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

JRP  
JRP

  
ELIZABETH M. COLE  
PRIMARY EXAMINER